

22 §1580-L. TOBACCO PRODUCT MANUFACTURER

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1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers, including, but not limited to, menthol, lights, kings and 100s. "Brand family" includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors or any other indicia of product identification identical or similar to or identifiable with a previously known brand of cigarettes. [2003 , c. 439 , §1 (NEW) .]

B. "Cigarette" has the same meaning as in section 1580-H, subsection 4. [2003 , c. 439 , §1 (NEW) .]

C. "Distributor" means a person that is authorized to affix tax stamps to packages or other containers of cigarettes under Title 36, section 4366-A or any person that is required to pay the excise tax imposed on cigarettes, including roll-your-own tobacco, pursuant to Title 36, chapter 703 or chapter 704. [2003 , c. 439 , §1 (NEW) .]

D. "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer. [2003 , c. 439 , §1 (NEW) .]

E. "Participating manufacturer" means a manufacturer as defined in the Master Settlement Agreement, as that agreement is defined in section 1580-H, subsection 5. [2003 , c. 439 , §1 (NEW) .]

F. "Qualified escrow fund" has the same meaning as in section 1580-H, subsection 6. [2003 , c. 439 , §1 (NEW) .]

G. "Tobacco product manufacturer" has the same meaning as in section 1580-H, subsection 9. "Tobacco product manufacturer" also means a participating manufacturer or a nonparticipating manufacturer. [2003 , c. 439 , §1 (NEW) .]

H. "Units sold" has the same meaning as in section 1580-H, subsection 10. [2003 , c. 439 , §1 (NEW) .]

[2003 , c. 439 , §1 (NEW) .]

2. Certification; participating manufacturer. Every participating manufacturer whose cigarettes are sold in this State, whether directly or through a distributor, retailer or similar intermediary, shall execute and deliver in the manner prescribed by the Attorney General a certification to the Attorney General no earlier than April 15th of each year and no later than April 30th of each year under penalty of perjury that as of the date of certification the tobacco product manufacturer is a participating manufacturer.

A. A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall provide an updated list 30 calendar days prior to any addition to or modification of its brand families and deliver a supplemental certification to the Attorney General. [2003 , c. 439 , §1 (NEW) .]

[2003 , c. 439 , §1 (NEW) .]

3. Certification; nonparticipating manufacturer. Every nonparticipating manufacturer whose cigarettes are sold in this State, whether directly or through a distributor, retailer or similar intermediary, shall execute and deliver in the manner prescribed by the Attorney General a certification to the Attorney General no earlier than April 15th of each year and no later than April 30th of each year under penalty of perjury that as of the date of certification the tobacco product manufacturer is in full compliance with subchapter 3.

A. A nonparticipating manufacturer shall include in its certification a complete list of all of its brand families that:

- (1) Separately lists for each brand family the number of units sold in the State during the preceding calendar year;
- (2) Indicates all of the nonparticipating manufacturer's brand families that have been sold in the State at any time during the current calendar year;
- (3) Indicates by an asterisk any brand family sold in the State during the preceding calendar year that is no longer being sold in the State as of the date of certification; and
- (4) Identifies by name and address any other manufacturer of the brand families in the preceding or current calendar year.

The nonparticipating manufacturer shall provide an updated list to the Attorney General 30 days prior to any addition to or modification of its brand families and deliver a supplemental certification to the Attorney General. [2003, c. 439, §1 (NEW) .]

B. In addition to submitting the lists required in paragraph A, a nonparticipating manufacturer shall also state in its certification that:

- (1) The nonparticipating manufacturer is registered to do business in the State or has appointed a resident agent for service of process and provided notice of the registration as required under subsection 8;
- (2) The nonparticipating manufacturer has:
 - (a) Established and continues to maintain a qualified escrow fund pursuant to section 1580-I; and
 - (b) Executed an escrow agreement, reviewed and approved by the Attorney General, that governs the qualified escrow fund;
- (3) The nonparticipating manufacturer is in full compliance with subchapter 3 and any rules adopted pursuant to this section and subchapter 3;
- (4) The name, address and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required under section 1580-I;
- (5) The account number of the qualified escrow fund and the subaccount number for the State;
- (6) The amount the nonparticipating manufacturer placed in the qualified escrow fund for cigarettes sold in the State during the preceding calendar year, the date and amount of each deposit and evidence or verification as may be determined necessary by the Attorney General to confirm the amount; and
- (7) The amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the qualified escrow fund or from any other qualified escrow fund into which the nonparticipating manufacturer has made escrow payments. [2003, c. 439, §1 (NEW) .]

[2003, c. 439, §1 (NEW) .]

4. Tobacco product manufacturer; brand family. A tobacco product manufacturer may not include a brand family in its certification unless:

A. In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is deemed to be the participating manufacturer's cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined pursuant to the Master Settlement Agreement; and [2003, c. 439, §1 (NEW) .]

B. In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is deemed to be the nonparticipating manufacturer's cigarettes for purposes of subchapter 3.

Nothing in this subsection may be construed as limiting or otherwise affecting the State's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of subchapter 3. [2003, c. 439, §1 (NEW).]

[2003, c. 439, §1 (NEW) .]

5. Maintain invoices. A tobacco product manufacturer of any cigarettes sold in this State shall maintain all invoices and documentation of sales and other information relied upon for certification for a period of 5 years unless otherwise required by law to maintain those invoices and documentation of sales and other information for a greater period of time.

[2003, c. 439, §1 (NEW) .]

6. Directory of cigarettes. The Attorney General shall develop and make available for public inspection a directory listing all tobacco product manufacturers that have provided accurate certifications conforming to the requirements of this section and all brand families that are listed in the certifications.

A. The Attorney General may not include or retain in the directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the Attorney General determines is not in compliance with subsection 3, paragraphs A and B, unless the Attorney General has determined that the nonparticipating manufacturer is no longer in violation of subsection 3, paragraphs A and B. [2003, c. 439, §1 (NEW).]

B. Neither a tobacco product manufacturer nor brand family may be included or retained in the directory if the Attorney General concludes that:

- (1) In the case of a nonparticipating manufacturer, all escrow payments required pursuant to subchapter 3 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, have not been fully deposited into a qualified escrow fund governed by an escrow agreement that has been approved by the Attorney General; or
- (2) All outstanding final judgments, including interest on the judgment, for violations of subchapter 3 have not been fully satisfied for the brand family or the tobacco product manufacturer. [2003, c. 439, §1 (NEW).]

C. The Attorney General shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this section. A determination by the Attorney General not to list or to remove from the directory a brand family or tobacco product manufacturer is a final agency action as defined in Title 5, section 8002. [2003, c. 439, §1 (NEW).]

[2003, c. 439, §1 (NEW) .]

7. Prohibition against stamping or sale of cigarettes. It is unlawful for any person to affix a tax stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory or to distribute, sell or offer or possess for sale in this State cigarettes of a tobacco product manufacturer or brand family not included in the directory.

A person who violates this subsection engages in an unfair and deceptive act in violation of the Maine Unfair Trade Practices Act.

[2003, c. 439, §1 (NEW) .]

8. Agent for service of process. Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the State as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the directory, appoint and continually engage without interruption the services of an agent in this State for the service of process concerning or arising out

of the enforcement of this section and subchapter 3. Such service constitutes legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number and proof of the appointment and availability of the agent to the Attorney General.

The nonparticipating manufacturer shall provide notice to the Attorney General 30 days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than 5 days prior to the termination of an existing agent appointment. In the event an agent terminates that agent's appointment by the nonparticipating manufacturer, the nonparticipating manufacturer shall notify the Attorney General of the termination within 5 days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

[2003, c. 439, §1 (NEW) .]

9. Reporting by distributors. No later than 20 days after the end of each calendar quarter and more frequently if so directed by the Attorney General, each distributor shall submit information as the Attorney General requires to facilitate compliance with this section, including, but not limited to, a list by brand family of the total number of cigarettes upon which the distributor affixed tax stamps during the previous calendar quarter or, in the case of roll-your-own tobacco, the equivalent stick count for which the distributor paid the tax due. The distributor shall maintain all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Attorney General for a period of 5 years.

[2003, c. 439, §1 (NEW) .]

10. Disclosure of information. Notwithstanding any other provision of law, the Department of Administrative and Financial Services, Bureau of Revenue Services is authorized to disclose to the Attorney General any tax information received by the Bureau of Revenue Services and requested by the Attorney General for purposes of determining compliance with and enforcing the provisions of this section. The Attorney General may share any information received under this section, other than information received from the Bureau of Revenue Services, with other federal, State or local agencies but only for purposes of enforcement of this section, subchapter 3 or corresponding laws of other states. The Attorney General shall provide notice to the Department of Administrative Services, Bureau of Revenue Services of those persons certified under this section.

[2003, c. 439, §1 (NEW) .]

11. Verification of qualified escrow fund. The Attorney General may require at any time that the nonparticipating manufacturer provide from the financial institution in which the nonparticipating manufacturer has established a qualified escrow fund for the purpose of compliance with subchapter 3 proof of the amount of money in the qualified escrow fund being held on behalf of the State, the dates of deposits and a listing of the amounts of all withdrawals from the fund and the dates of the withdrawals.

[2003, c. 439, §1 (NEW) .]

12. Requests for additional information. The Attorney General may require a distributor or tobacco product manufacturer to submit any additional information, including, but not limited to, samples of the packaging or labeling of each brand family necessary to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with this section.

[2003, c. 439, §1 (NEW) .]

13. Escrow installments. To promote compliance with the provisions of this section, the Attorney General may adopt rules requiring a tobacco product manufacturer subject to the requirements of subsection 3, paragraph A to make the required deposits in the qualified escrow fund in installments during the year in which the sales covered by the deposits are made. The Attorney General may require sufficient information to enable the Attorney General to determine the adequacy of the amount of the installment deposit.

[2003, c. 439, §1 (NEW) .]

14. Rules. The Attorney General may adopt rules necessary to carry out the purposes of this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2003, c. 439, §1 (NEW) .]

15. Unlawful acts. A person may not:

A. Sell or distribute cigarettes in violation of subsection 7; [2003, c. 439, §1 (NEW) .]

B. Violate paragraph A after having been previously convicted of a violation of this section; [2003, c. 439, §1 (NEW) .]

C. Acquire, hold, own, possess, transport, import or cause to be imported cigarettes that the person knows or should have known are intended for distribution or sale in the State in violation of subsection 7; or [2003, c. 439, §1 (NEW) .]

D. Violate paragraph C after having been previously convicted of a violation of this section. [2003, c. 439, §1 (NEW) .]

[2003, c. 439, §1 (NEW) .]

16. Criminal penalty. A violation of this section is a Class E crime except that violation of this section is a Class D crime when the person has one or more prior convictions for violation of this section. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.

Each stamp affixed and each offer to sell cigarettes in violation of subsection 7 constitutes a separate violation.

[2003, c. 439, §1 (NEW) .]

17. Contraband; seizure. Cigarettes that have been sold, offered for sale or possessed for sale in this State in violation of subsection 7 are deemed contraband under Title 36, section 4372-A and the cigarettes are subject to seizure and forfeiture as provided in section 4372-A. All cigarettes so seized and forfeited must be destroyed and may not be resold.

[2003, c. 439, §1 (NEW) .]

18. Injunction. The Attorney General may seek an injunction to restrain a threatened or actual violation of subsection 7, 9 or 12 and to compel compliance with these subsections.

[2003, c. 439, §1 (NEW) .]

19. Recovery of costs. In any action brought by the State to enforce this section, the State is entitled to recover the costs of investigation, expert witness fees, costs of the action and reasonable attorney's fees.

[2003, c. 439, §1 (NEW) .]

20. Profits. If a court determines that a person has violated this section, the court shall order any profits, gain, gross receipts or other benefit from the violation to be paid to the Fund for a Healthy Maine. Unless otherwise expressly provided, the remedies or penalties provided by this section are cumulative to each other and to the remedies or penalties available under all other laws of this State.

[2003, c. 439, §1 (NEW) .]

21. Construction; severability. If a court of competent jurisdiction finds that the provisions of this section and of subchapter 3 conflict, then the provisions of subchapter 3 control. If any portion of this section causes subchapter 3 to no longer constitute a qualifying or model statute, as those terms are defined in the Master Settlement Agreement, then that portion of this section is not valid.

[2003, c. 439, §1 (NEW) .]

SECTION HISTORY

2003, c. 439, §1 (NEW) .

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